IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 11TH SEPTEMBER 2007 / 0TH BHADRA 1929

Crl.Rev.Pet.No. 3027 of 2007()

SC.1/2006 of SESSIONS COURT, ALAPPUZHA
.....

REVN. PETITIONER: 11TH ACCUSED:

SUJITH, S/O.KALESAN, PUTHUPPARAMBU
VEEDU, WARD NO.IX, PALLIPPURAM PANCHAYAT,
CHERAI, KOCHI TALUK, ERNAKULAM.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS: RESPONDENT/STATE:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR (SRI.K.C.SANTHOSH KUMAR)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

CRL.R.P.NO. 3027 OF 20O7

Dated this the 11th day of September, 2007

O R D E R

Koshy, J.

Doubting the correctness of the decision reported in ***Kuriakose Chacko v. State*** (1950 KLT 628), a learned Single Judge of this Court referred this Revision Petition before the Division Bench. Before going into the question of law involved in the above decision, we may consider the facts of the case. Petitioner is the 11th accused in SC.No.1 of 2006 of the Sessions Court, Alappuzha. Charge was framed against 12 accused on 6.8.2007 after their case was committed to the Sessions Court by the Magistrate's Court. In the charge sheet accused 1 to 4, 6 and 7 were charge sheeted for offences punishable under Section 302 IPC. Accused 5 and 8 to 13 were charge sheeted for the offence under Section 212 read with Section 34 IPC. This revision petition is filed by the 11th accused. In the charge sheet the allegations against 11th accused are mainly contained in paragraphs 32, 33 and 34 which are as follows:

> "32. Thirtysecondly, that you all A10, A11 and A12 knowingly that you all A1 to A4 and A6 and A7 committed the murder of Ramesh on 20.7.05 at 1.45 pm at a place 50 metres north to Kanichukulangara junction and with the intention of screening them from legal

> punishment you all A10 to A12 in furtherance of the common intention harboured you A6 and A7 by concealing them from 2/9/05 to 5/9/05 and from 12/9/05 to 13/9/05 in Ordnance Factory Quarters No.5/589 in Aravamkodu Desom in Umathalai Village in Nilgiri District in Tamil Nadu in the occupation of Cw56 and thereby you A10 committed the offence punishable u/s.212 r/w sec.34 of the IPC and within my cognizance:
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> 33. Thirtythirdly, that you all A5 and A11 knowingly that you all A1 to A4 and A6 and A7 committed the murder of Ramesh on 20/7/05 at 1.45 pm at a place 50 metres north to Kanichukulangara junction and with the intention of screening them from legal punishment you A5 and A11 in furtherance of the common intention harboured you all A3, A4, A6 and A7 by concealing them on 29/7/05 in the hotel "Shivas Pleasure Inn" at Ootty in the room taken on rent in the name of you A11 in that hotel and thereby you A11 committed the offence punishable u/s.212 r/w s. 34 of the IPC and within my cognizance.
>
> 34. Thirtyfourthly, that you all A10 to A12 knowingly that you all A1 to A4 and A6 and A7 committed the murder of Ramesh on 20/7/05 at 1.45 pm at a place 50 metres north to Kanichukulangara junction and with the intention of screening them from legal punishment you all A10 to A12 harboured you A6 and A7 by concealing them from 2/9/05 to 5/9/05 and from 12/9/05 to 13/9/05 in Ordnance Factory Quarters No.5/589 in Aravamkodu Desom in Umathalai Village in Nilgiri District in Tamil Nadu in the occupation of Cw56 and you A11 and A12 staying with them for four days from 3/9/05 in that quarters of Cw56 and thereby you A11 committed the offence punishable u/s.212 r/w sec. 34 of the IPC and within my cognizance:"

2. It was contended by the petitioner that a person can be charge sheeted under Section 212 only after the main accused has been convicted for the offence alleged against them. In other

words, charge can be filed under Section 212 only after the person who is alleged to have been harboured has been convicted. Secondly it was contended that Section 212 is an offence triable by the Magistrate and there is no necessity to try along with the main case before the Sessions Court. Thirdly it was contended that earlier when the police filed final report, that was accepted by the court. Thereafter a further enquiry was conducted as permissible under Section 173(8). Then only petitioner was arrayed as an accused for having committed the offence under Section 21`2. But it is the contention of the petitioner that except the statement of CW14, in the further investigation no material was found out and therefore filing of charge sheet against the petitioner is improper as there is no basis at all for charge sheeting him. Finally, it was contended that there is no prima facie case against the petitioner. Therefore, charge against the petitioner is liable to be set aside. On 18.8.2007, a Division Bench of this Court stayed the final judgment in S.C.No.1/2006 as against the petitioner, but, allowed the trial to be proceeded with.

3. Section 212 IPC reads as follows:

> "212. **Harbouring offender**.- Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment;
>
> **if a capital offence**.- shall, if the offence is punishable with death, be punished with

> imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;
>
> **if punishable with imprisonment for life, or with imprisonment.-** and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;
>
> and if the offence is punishable with imprisonment with may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.
>
> "*Offence*" in this section includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.
>
> *Exception*.- This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender."

4. A plain reading of Section 212 of the Indian Penal Code would show that for convicting a person under section 212, the following essential ingredients must be established:

(i) the offence must have been committed, i.e.,completed and there must be an 'offender';

(ii) there must be harbouring or

concealment of a person by the accused;

(iii) the accused knows or has reason to believe that such harboured or concealed person is the offender;

(iv) there must be an intention on the part of the accused to screen the offender from legal punishment.

The first ingredient to be proved is that an offence has been committed. In other words, before convicting a person for committing an offence under Section 212 for harbouring or concealing, it must be proved that an offence has been committed. Upon proving the same, prosecution also should prove that there must be harbouring or concealing of the person known or has reason to believe to be the offender. It is a positive act. A mere help given to a person for absconding without any knowledge that he has committed a crime is not enough. The person accused of section 212 must harbour or conceal the person by providing his shelter or otherwise. He must have given shelter to him with knowledge that he is an offender or has reason to believe to be an offender. The word used is 'offender' and not 'accused' or a person convicted for that offence. The person who is sheltering or harbouring or concealing that

person must have knowledge or has reason to believe that he is

the 'offender'.

5. Section 26 of the Indian Penal Code defines 'reason to believe' which reads as follows:

> "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."

So, the person accused of harbouring an offender must have a knowledge or must have reason to believe that the person harboured or concealed has committed an offence. The word 'harbour' as a noun ordinarily means ' a place to shelter ships from the violence of the sea, and where ships are brought for commercial purposes to load and unload goods. In criminal law, 'to harbour' means to give the offender a shelter. Section 52-A of IPC defines 'harbour' as follows:

> "Except in section 157, and in Section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means or conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension."

The word 'harbour' is defined as follows in **Law Lexicon of P.Ramanatha Aiyer**, Second edition:

> "In construing a statue making the

> harbouring or concealing of an offender a crime, it was said that the word 'harbour' is defined by Worcester 'To entertain; to shelter; to rescue; to receive clandestinely and without lawful authority.' By Webster; 'To shelter; to rescue; to secure; to secrete, as to harbour a thief'. The word in statute only apply when the person is harbored or concealed with knowledge that he is an offender."

The word 'harbouring' is defined as follows:

> 'Harbouring' means a fraudulent concealment, and hence, where slaves or prisoners ran away, and were found in the possession of defendant, who openly maintained them, and gave notice to plaintiff that he would do so until they were recovered by law there was no harbouring."

The word 'to harbour' is defined as follows:

> "One harbours that which ought not to find room anywhere; one shelters that which cannot find security elsewhere; one lodges that which wants a resiting place. Thieves, traitors, conspirators, are harboured by those who have an interest in securing them from detection; either the wicked or the unfortunate may be sheltered from the evil with which they are threatened; travelers are lodged as occasion may require."

There should be a positive act by the person charged to harbour or

conceal an person whom he knows or has reason to believe to be the offender.

6. In Darch v. Weight [1984] 2 AII.E.R. 245], it was held that merely to assist or provide support would not be enough. He must have provided shelter in the sense of providing a refuge for an escape. The word 'conceal' means 'to hide or keep secret'. Concealing his presence is made mention in Section 109 of the Code of Criminal Procedure. Meaning of the words 'conceal' and 'presence' are very wide and they are sufficient to cover concealment of persons in a house or grove or under a bridge; but, are also sufficient to cover when a man conceals his appearance by wearing a mask or disuishing himself in some other manner (See:Kasinath v. Emperor – 1934 Allahabad 45). The person accused of an offence under section 212 should either harbour or conceal a person knowing or with the reason to believe that he is the offender. Further, to attract punishment, it is further to be proved that there was intention on the part of the accused to screen that offender from legal punishment.

7. In Kuriakose Chacko v. State (1950 KLT 628) petitioner was charged under section 207 of the Travancore Penal Code (corresponding Section 212 of IPC). The court held that the trial was premature as, in that case, the main offender, who was said to have harboured, was not convicted at that time and until the

offender has been convicted of the offence he is alleged to have committed, conviction cannot be made under section 207 of the Travancore Penal Code for harbouring the offender. The court followed the decision of the Patna High Court in Ram Raj Chaudhury v. Emperor (AIR 1946 Pat. 74). In that case, the court held as follows:

> " The point which arises in this case arose in another case in this court, which related to the conviction of one Jang Bahadur, and **Meredith,J.** dealt with it in this way: 'There is another aspect of the case which has been lost sight of by the courts below. The prosecution was premature. Section 212 says nothing about the harbouring of an absconder or an accused person. It renders punishable only the harbouring of a person when it is known or there is reason to believe that he is the offender. The first thing to be proved in a case under this section is that an offence has been committed by the person harboured. Jang Bahadur's trial, however, has not yet been concluded. Until actually convicted, he is, like every one else, entitled to the presumption that he is innocent. Only the court can say in due course whether he is actually an offender or not. The court has not yet said that; and until the Court has pronounced upon the fact, a prosecution or harbouring him is clearly premature. The proper course would have been to hold up this case under

> Section 212 until the conclusion of Jang Hahadur's trial, when it might have proceeded in the event of his conviction, but, obviously not otherwise."

It was held that, in such cases, trial of the case against a petitioner should be stayed until, at least, disposal of the case against the main accused. The above view was followed in Kuriakose Chacko v. State (1950 KLT 628). Patna High Court followed the Madras High Court decision in Palani Goudan v. Emperor (1937 M.W.N. 21). Charge was not quashed, but, the trial was only stayed awaiting the disposal of the case against the main accused. In **Kuriakose Chacko's** case and in the other case referred in this order, the accused was charged separately for harbouring person who has reason to believe to be an offender. The court held that only if 'offender' is concealed or harboured, case under section 212 can be established and, therefore, the trial has to be stayed till the main case is disposed of. The above view was taken by the Orissa High Court in Niranjan Ojha v. State of Orissa (1992 Crl.L.J.1863). The correctness of the view is doubted by the the learned Single Judge.

8.We have perused section 212 many times. It is not stated in section 212 that the person who was harboured or concealed should beconvicted, to attract the provisions of the section. What is to be proved is that the accused facing charges under Section 212

conceals or harbours a person whom he has reason to believe that he is the offender notwithstanding the fact that main offender is not proceeded against by the police due to wrong identification or he was acquitted for any reason whatsoever. But, it should be proved that an offence has been committed. On the date and at the time of harbouring or concealment the accused must be aware i.e., know or reasonably believe that the person harboured or concealed is the offender. There is nothing in the section to indicate that a person can be convicted for offence under Section 212, only if the person harboured or concealed is "proved" to be an "offender" and he is convicted. The word "offender" is not defined under IPC. "Offender" as per the Dictionary, means "a person who has committed a crime or offence". He is not a person who is convicted of an offence because there may be wrong convictions which may be set aside in appeal. There can be such wrong acquittals also. Hence, a person who is convicted or acquitted may be an offender, for the purpose of section 212, if the accused had the knowledge or reasonable belief that he has committed the offence. An offender is also not a person who is merely `accused' of an offence, because an accused may or may not be guilty or even innocent. Therefore, an "offender" for the purpose of Section 212 is neither a convict nor an accused, but he is a person who has actually committed the offence.

It is not because a person is held to be guilty of offence or convicted that he becomes an offender. Even an actual offender may be acquitted, if the prosecution fails to prove that he has committed an offence. An accused is deemed to be innocent unless he is found guilty. But, the failure of prosecution to prove the identity of the person who committed the offence does not render the person who committed the offence not an offender. He can only be said to be an offender whose guilt has not been proved in court. Yet, he is an offender, if he has committed an offence. Therefore, it is not the conviction or the acquittal which matters. But, it is the knowledge or the reasonable belief of the accused under Section 212 that the person whom, he has harboured or concealed to be the offender, which is relevant. But, such knowledge or belief must be entertained by the accused, on the date on which he commits the offence by harbouring or concealing him.

9. We also note that section 201 which deals with causing disappearance of evidence of an offence with the intention of screening the offender or with the intention of giving any opinion respecting the offence which he knows or believes to be false is more or less a comparable section and the matter came up for consideration before a Division Bench of this Court in Treesa v. State of Kerala (1991 (1) KLT 503). In that case, the accused was

alleged to have committed the offence under section 302 and 201 of the Indian Penal Code. The allegation was that accused murdered her husband and tried to screen herself by giving false information so as to appear that it is a suicide. The Trial Court found that it was not a suicide, but, a murder. In the house, the deceased and only a three year child and accused were staying and without her knowledge the murder would not have been committed. The trial court found that prosecution failed to prove the main offence under section 302 beyond reasonable doubt, but, ingredients of section 201 were satisfied. The accused filed an appeal contending that since the main offence was not proved and offender is not punished, she cannot be convicted under section 201 IPC for screening the offender. The court observed as follows:

> "One of the main contentions raised by the learned counsel for the accused is that no offence under S.201 of the I.P.C. can be found unless the court is able to hold that the main offence was committed by a particular individual. In Kalawati v. The State of Himachal Pradesh (AIR 1953 S.C. 131) it was held that acquittal of the accused is no impediment to convict him for the offence under S.201 of the I.P.C. That was a case in which a wife was charged for murder of her husband along with another person and the court acquitted her for murder, but convicted the other person for the main offence and then proceeded to consider whether the wife committed the offence under S.201 of the I.P.C. It was in the said background that the Supreme Court held that acquittal of the wife for the main offence is no legal impediment to convict her for the offence under S.201 of the IPC. A Division Bench of this Court has observed in

> Mohammed v. State of Kerala (1988(2) KLJ 470) that "where there is cogent evidence that the accused caused evidence to disappear in order to screen another, known or unknown, the mere fact that he had been suspected or even tried and acquitted of the principal crime, would not by itself prevent his conviction under S.201 of the IPC." Learned counsel canvassed for a reconsideration of the aforesaid observation that even without the offender remaining unknown the offence under S.201 can be found against a known accused charged with the offence. We do not think that there is any need for reconsideration of the aforesaid observation, particularly on the facts of this case. It may be that the identity of the main offender was not established through evidence of the case. It does not mean that the accused was unaware of the identity of the main offender."

We are of the opinion that similar view can be adopted while interpreting section 212 also. But, in order to establish the charge under section 201 or 212, it is essential to prove that an offence has been committed. The Division Bench also held as follows:

> "In Palvinder Kaur v. State of Punjab (AIR 1952 SC 354) Supreme Court held that in order to establish the charge under S.201 it is essential to prove that an offence has been committed and mere suspicion that it has been committed is not sufficient and that the accused know or had reason to believe that such offence had been committed and with the requisite knowledge and with intent to screen the offender from legal punishment causes evidence thereof to disappear or gives false information respecting such offences. The Supreme Court observed further that "it was essential in these circumstances for the prosecution to establish affirmatively that the death of the deceased was caused by the administration of pottassium cyanide by some person and that she had reason to believe that it was so caused and with that knowledge she took

> took part in the concealment and disposal of the dead body." Since the court was in doubt as to whether death of the deceased in that case was due to homicide or suicide, the court declined to convict the accused for the offence under S.201 of the IPC. Following the said observation, the Supreme Court has held in a later decision that the proof of the commission of an offence is an essential requisite for bringing home the offence under S.201 of the IPC (vide Suleman Rahiman v. State of Maharashtra - AIR 1968 SC 829). The position is made clearer in Roshan Lal v. State of Punjab (AIR 1965 SC 1413) in which the Supreme Court observed that the word "offence" wherever used in S.201 means some real offence, which, in fact, has been committed and not some offence which the accused imagines has been committed."

10. The above decision was upheld by the Apex Court after detailed consideration in V.L. Tresa v. State of Kerala ((2001) 3 SCC 549). The Supreme Court has also held that having regard to the language used, mere suspicion would not be sufficient; there must be cogent evidence available on record that the accused has knowledge or has reason to believe that the offence has been committed. While commenting upon section 201, the Apex Court in Roshan Lal and others v. State of Punjab (AIR 1965 SC 1413) observed as follows at paragraph 12:

> "Section 201 is somewhat clumsily drafted, but we think that the expression 'knowing or having reason to believe' in the first paragraph and the expression 'knows or believes' in the second paragraph are used in he same sense. Take the case of an accused who has reason to believe that an offence has been committed. If the other conditions of the first paragraph are

> satisfied, he is guilty of an offence under Section 201. If it be supposed that the word 'believes' was used in a sense different from the expression 'having reason to believe', it would be necessary for the purpose of inflicting punishment upon the accused to prove that he 'believes' in addition to 'having reason to believe'. We cannot impute to the legislature an intention that an accused who is found guilty of the offence under the first paragraph would escape punishment under the succeeding paragraphs unless some additional fact or state of mind is proved."

This passage is applicable to the meaning of the word "has reason to believe" used in section 212. For attracting section 212 also, it is essential to prove that an offence has been committed and mere suspicion that it has been committed is not enough and accused knew or has reason to believe that such offence had been committed and with requisite knowledge and with the intention to screen the offender from legal punishment, he must have harboured or concealed the offender, but, the intention cannot be presumed. If the accused did not know that an offence has been committed or is not aware or has no reason to know the identity of the offender, section 212 is not attracted and burden of proof is on the prosecution.

11. The offence under Section 212 comes under Chapter XI of IPC, which refers to offences against public justice. The said Chapter is titled as, "of false evidence and offences against public justice." Thus, an act of harbouring or concealing has been made

an offence in the interest of public justice. It is the duty of every citizen who is aware of commission of or of the intention of any other person to commit any offence punishable under Sections 302, 304 , 449 etc., etc., to forthwith give information to the nearest Magistrate or police officer of such commission of offence or intention. This provision is mandatory unless there is a reasonable excuse for omission or failure to inform. Section 39 of the Code of Criminal Procedure specifically provides that public "shall" give information to the Police or the nearest Magistrate regarding commission of certain offences referred to in the said Section. It is the duty of every citizen to bring to the notice of the authority regarding commission of offence and bring the offender before law to receive the punishment which he deserves, if he is aware of commission of offence or the intention to commit the offence specified in Section 39. Section 39 is only a procedural section, violation of which is not made punishable under any penal statute, but, if a person who has knowledge or reasonable belief that a person is the offender can be treated as a person who is aware of the commission of the offence and even if he is not punishable for violating section 39 of the Code of Criminal Procedure when he harbours or conceals such an offender, he must certainly be guilty for offence under section 212. When an offence under Section 212 is committed, public justice will be the causality and the courts

shall view the offence seriously and keep in mind the object of the provision for which it is enacted. The object as it appears from the language of the provision is to prevent intentional harbouring or concealing an offender with the criminal intention of screening him from legal punishment.

12. It is true that in Tolaram Relumal v. State of Bombay (AIR 1954 SC 496) it was held that it is well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty, but, it is not competent for the Court to stretch out the meaning of expression used by the Legislature in order to carry out the intention of the Legislature. It is settled law that the rule that statutes imposing criminal or other penalties should be construed narrowly in favour of the person proceeded against. According to **Maxwell on The Interpretation of Statutes** if there is any ambiguity in the words which set out the elements of an act or omission declared to be an offence, so that it is doubtful whether the act or omission in question in the case falls within the statutory words, the ambiguity will be resolved in favour of the person charged. (See: **Maxwell on The Interpretation of Statutes,** Twelfth edition, page 240). But, that is possible only if the penal statute is capable of two

possible interpretation. In **Craies on Statute Law** (1971 Ed. Chapter 21), the principle regarding penal provisions has been stated as under:

> "But, penal statutes must never be construed so as to narrow the words of the statute to the exclusion of cases which those words in their ordinary acceptations would comprehend ..... But where the thing is brought within the words and within the spirit, there a panel enactment is to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

13. In Lalita Jalan v. Bombay Gas Co. ((2003) 6 SCC 107), this question was examined in considerable detail and it was held that the principle that a statute enacting an offence or imposing a penalty is to be strictly construed is not of universal application which must necessarily be observed in every case. The Apex Court also noticed in the above decision that in Murlidhar Meghraj Loya v. State of Maharashtra (AIR 1976 SC 1929); Kisan Trimbak Kothula v. State of Maharashtra (AIR 1977 SC 435); Superintendent and Remembrancer of Legal Affairs to Govt. of West Bengal v. Abani Maity (AIR 1979 SC 1029) and State of Maharashtra v. Natwarlal Damodardas Soni (AIR 1980 SC 593) held that penal provisions should be construed in a manner which

will suppress the mischief and advance the object which the Legislature had in view. The above view was accepted by the Constitution Bench of the Apex Court recently in Iqbal Singh Marwah and another v. Meenakshi Marwah and another (2005 AIR SCW 1929 = AIR 2005 SC 2119). The mischief sought to be prevented and the object which is sought to be achieved have to be understood by the courts while interpreting the offence under Section 212. A purposive interpretation has to be given and the mischief rule has also to be applied while interpreting the provision under Section 212, especially because the offence under the said section is against public justice. If the provision is interpreted in such a way to hold that a person can be convicted for offence under section 212 only if the main offender is convicted, in our view, it will defeat the purpose of the provision. The duty of the court is to find out the real purpose of the legislation as expressed in clear and unambiguous language and that obligation is not at all altered merely because the Act is of penal character as held in Thomson v. His Honour Jude Byne (1979 (73) ALJR 642 paragraph 19, page 648). As far as section 212 is concerned, there is no question of ambiguity. The words are plain and capable of only one meaning. Therefore, even without reference to 'Heydon's Rules' that is 'purposive construction' or 'mischief rule' section 212 can be interpreted as

wordings are clear. The cardinal principle of construction of a Statute is that when the language of the Statute is plain and unambiguous, the Court must give effect to the words used in the Statute whatever may be the consequences as held in Union of India v. Hansoli Devi [(2002) 7 SCC 273]; Nathi Devi v. Radha Devi Gupta [(2005) 2 SCC 271] and Promoters & Builders Association, Pune v. Pune Muncipal Corporation [(2007) 6 SCC 143]. This rule is applicable while constructing all types of Statutes including penal statutes. One cannot import words in the Statute so as to restrict the meaning by interpreting the words 'the offender' as only an offender who is convicted by a criminal court. We cannot supplement the word 'convicted' before the word 'offender' in section 212 by some interpretative methods. As held by the Apex Court in Union of India v. Shardindu [(2007) 6 SCC 276) the question of supplementing 'casus omissus' by the court does not arise when the language of the Statute is plain and unambiguous. Normally accepted maxim is 'casus omissus proomisso habendus est' meaning that a case or word omitted is to be held as intentionally omitted.

14. The application of the rule of strict interpretation does not permit the court to restrict the comprehensive language used by the Legislature if the natural meaning is in accordance with the object of the Statute. Hence, the Supreme Court in State of

Maharashtra v. Tapas D. Neogy ((1999) 7 SCC 685) refused to interpret the words 'any property' under Sec.102 of the Code of Criminal Procedure in a narrow way which favours the accused and Supreme Court preferred to accept a wider view which is more consistent with the object of the provision. In that case, the Supreme Court interpreted the word 'property' so as to include a bank account so that a police officer investigating a case under the Prevention of Corruption Act was entitled to seize it. In State of Kerala v. Mathai Varghese ((1986) 4 SCC 746), the expression 'any currency note or bank note' used in section 489-A of the Penal Code was construed to include currency note of all countries and not only Indian currency note rejecting the plea for taking a strict view.

15. In Dyke v. Elliot [(1872) LR 4 PC 184 at page 191], Lord Justice James who spoke for the Privy Council observed as follows:

> "No doubt, all penal statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used,and must not strain the words on any notion that there has been a slip; that there has been a *casus omissus*; that the thing is so clearly within the mischief that it must have been included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But, where the thing is brought within the words, and within

> the spirit, there a penal enactment is to be construed, like any other instrument, according to fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other enactment."

It was followed by the **House of Lords** in London and North Eastern Railway Co. v. Berriman ((1946) 1 All. ER 255) and also by the Supreme Court of India in M. Narayan Nambiar v. State of Kerala (AIR 1963 SC 1116 at page 1118).

16. In Suman Sethi v. Ajay K. Churiwal (AIR 2000 SC 828), **Subbarao, J.** observed as follows while considering Prevention of Corruption Act:

> "The Act was brought in to purify public administration. When the Legis-lature used comprehensive terminology- to achieve the said purpose, it would be appropriate not to limit the content by construction when particularly the spirit of the statute is in accord with the words used there."

In Pakala Narayanaswami v. Emperor (AIR 1939 PC 47) while interpreting penal statute, the Privy Council held that the words 'any person' in section 162 of the Code of Criminal Procedure included any person who may thereafter be an accused. **Lord Atkin** proceeded to observe at page 51 as follows:

> "It, therefore, appears inadmissible to consider the advantages or disadvantages of applying the plain meaning whether in the

interests of the prosecution or accused."

The above view was followed in State of Haryana v. Bhajanlal (AIR 1992 SC 604). In State of UP v. Vijay Anand Maharaj (AIR 1963 SC 946 at page 950) it was held as follows:

> "When a language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself."

17. Nowhere in section 212 it is stated that the person concealed should be convicted for an offence. Even if the main offender leaves unpunished by the court, the object of the provision under Section 212 requires that the person who has concealed or harboured the offender whom he believes and knows has committed the offence shall not leave unpunished if the other ingredients are established. The criminality lies in the act of concealment committed with the knowledge or belief that the person who is harboured or concealed is the offender and also with the criminal intention of screening him from legal punishment. Hence, we are unable to accept the dicta in Kuriakose Chacko v. State (supra) and similar line of decisions to the effect that the word 'offender' under section 212 means a convicted offender. It is true that if the accused who is alleged of committing the offence under section 212 if charged separately, on the facts of a particular case, it may be advisable to wait for the conclusion of trial of main

accused as finding in the same may have a bearing on the question whether 'an offence at all has been committed', but, in such case, we are of the opinion that proper course advisable would be to commit the case to the Sessions Court where the main offence is being tried and club with the main case as was done in this case. It will give an opportunity to the accused also to prove that no offence has been committed as alleged. In such case, only after considering the question of commission of the offence part pleaded by the main offender etc. question of commission of offence under section 212 will be considered by the trial judge and no prejudice will be caused to the accused also.

18. There is no basis for the contention that no new material has come out in the further investigation or there is no prima facie case. Here, the case of the prosecution is that he has harboured some of the accused including the six accused. For the purpose of concealing harboured accused 4,6 and 7 took room in the petitioner's name in the hotel, “Shivas Pleasure Inn” at Ootty on 29.7.2005 and also accompanied the accused to the Ordnance Factory Quarters No.5/589 in Aravamkodu Desom in Umathalai Village in Nilgiri District for a period from 2.9.2005 to 5.9.2005 and from 12.9.2005 to 13.9.2005. It is also pertinent to note that the sixth accused was absconding for a long time. The allegation is that there was no reason to believe that petitioner harbored the

accused from screening them from legal punishment. That is a matter for evidence. In this connection, we refer to Sections 227 and 228 of the Code of Criminal Procedure. After hearing the submissions of both sides and additional report, on committal from the Magistrate's Court, the Sessions Judge considered that there is a prima facie case that the accused has committed offence under Section 212 IPC for the purpose of framing charge. Hence, the charge was framed under Section 212 IPC against the petitioner. We also note that the Sessions Court only prima facie found that the petitioner can be charge sheeted and it is for the parties to adduce evidence before the court. It is also submitted by the learned Public Prosecutor that trial has already been commenced and is going on and when the stay petition came up for hearing, only the passing of final judgment was stayed and allowed the court to proceed with the trial. We are of the view that it is not proper for us to stay or quash the proceedings as it is for the petitioner to take appropriate defences before the Sessions Court.

19. Section 173(8) of Cr.P.C. gives ample power to the police to conduct further investigation even after police submits charge sheet, final report and magistrate takes cognizance of the same. In this connection, we refer to the decision of the Supreme Court in Gudalure M.J.Cherian and others v. Union of India and others [(1992) 1 SCC 397], State of Bihar and another v. J.A.C. Saldanha

and others [(1980) 1 SCC 554] and Union Public Service Commission v. S.Papaiah and others (1997 SCC (Cri.) 1112). We also refer to the decision of a Division Bench of this Court in Shaji v. State of Kerala (2003 (2) KLT 929) and Hasanbhai Valibhai Qureshi v. State of Gujarat and others (2004 AIR SCW 2063). The only condition is that if the person is arrayed as an accused subsequently on the basis of further report, to avoid any prejudice to him, the witnesses, if any, examined before he was made an accused should be recalled as provided under section 217. Main offence in the case is connected with the offence alleged to have been committed by the petitioner.

20. In this connection, we also refer to section 220 and 223 of the Code of Criminal Procedure. The alleged concealment of the main offender is committed in the course of the same transaction and section 223 is only an enabling section and court has discretion to proceed jointly or separately. The words 'same transaction' occurring in section 223 comprises of action done in carrying out the offence. The primary condition for the application of the clause is that the person should have been accused even if in the same offence or different offence committed in the case of the same transaction. The prima facie test contained in the application of the words 'in the course of' indicate common purpose or continuity in their action as held by the Supreme Court in Balbir v.

State of Haryana (AIR 2000 SC 11). It was held that the instances made in section 223 is only enumerative and not exhaustive. We also note that in Rajiv Gandhi murder case, the persons who were charged with offence under section 212 were also tried along with the main accused as can be seen from State of Tamilnadu through Superintendent of Police, CBI/SIT v. Nalini and others (AIR 1999 SC 2640). In that case, few accused persons, namely, Dhanasekharan (A23), Rangan (A24), Vikki (A25) and Ranganath (A26) were convicted for offence under section 212 for harbouring and giving shelter to some of the main accused who were charge-sheeted and tried together. (See: paragraphs 57 to 58 of the Supreme Court judgment). I would shoaw that a common charge sheet can be issued along with the main accused. But, persons accused of section 212 can be convicted only if an offence is committed by him and he has knowledge or reason to believe that he has committed the offence.

21. The contention that the allegation under Section 212 IPC is a separate offence and it cannot be clubbed with main Sessions Case is also not tenable. We are of the opinion that the incident is in separately connected with the main case. Like criminal conspiracy, abetment, concealing the articles or body after the crime or harbouring the offender etc. all are interconnected and form part of the same transaction. We are not discussing about

the merits of the case in this revision petition so that the case of the prosecution and defence of the petitioner are not a affected by any of the observations made i this order. We are also of the view that no injustice or prejudice is caused to the petitioner in trying along with the other accused. Unless prima facie injustice is caused, charge cannot be quashed in a revision petition. The accused was charge sheeted along with the others in the course of some transactions as mentioned under Section 223 Cr.P.C. Since all are facing trial, petitioner can cross-examine the witnesses who have given evidence against him and no prejudice is caused. Since the petitioner was charge-sheeted along with the main accused, there is no need for staying the trial in this case as was done in **Kuriakose Chacko's** case, even for finding that an offence was convicted. To punish an accused who is charged under Section 302 or 212 prosecution has to prove the alleged commission of offence. If it is proved that no offence as alleged was committed, petitioner is also entitled to an acquittal automatically. Therefore, there is no necessity to quash or stay the proceedings against the petitioner. We are no expressing any opinion regarding the merits of the allegations as it is for the trial court to decide the matter on the basis of evidence adduced.

22. We also note that the contention that only the

Magistrate's Court can try the offence is of no merit. The case against the petitioner was committed by the Magistrate's Court to the Sessions Court to be tried along with other accused in S.C.No.1/2006 by order in C.P.No.61/2007 and it was originally numbered as S.C.No.382 of 2007, but, as it was connected with the main case S.C.No.1/2006, it was clubbed with that case. There is no bar in the case being tried by the Sessions Judge in view of Section 26 read with Section 193 of the Code.

In the above circumstances, we see no ground to set aside the charge framed by the Sessions Judge against the petitioner as prayed for by the revision petitioner and the revision petition is dismissed.

J.B.KOSHY, JUDGE

K. HEMA, JUDGE.

Krs.